Section 5 provides :—

"The duty required to be paid under this Ordinance shall be a debt due to the Federation Government and shall be recoverable by any of the ways and means in force for the time being for the recovery of debts due to the Government."

Section 7 reads :—

"(1) If the promoter fails to deliver the Statements to the Collector of Stamp Duties as provided in section 3 of this Ordinance he shall be liable to a fine not exceeding five hundred dollars.

(2) If the promoter, with intent to evade the duty chargeable under this Ordinance, draws up a statement referred to in section 3 of this Ordinance, which is false in any material particular he shall be liable to a fine not exceeding one thousand dollars or four times the amount of the duty payable, whichever is higher."

The purpose of the Ordinance is plain; a duty is charged on the amount contributed to a sweepstake. The responsibility of preparing the statement of accounts and of paying the duty is placed by the Ordinance on the promoter. If the promoter fails to deliver the statements or, with intent to evade the duty, draws up a statement which is false in any material particulars, he is liable to penalties. It is on the promoter that the Ordinance places every duty under the Ordinance. The reasons for placing these responsibilities fairly and squarely on the shoulders of promoters of sweepstakes are so obvious as to require no comment. I find myself in some difficulty in understanding the learned trial judge's reference to the "privy purse of the promoter". The only question, to my mind, to be decided is whether the promoter is liable for the payment of the duty and whether, if he fails to do so, he is liable to be sued in debt. Under section 3 (1) of the Ordinance "the promoter ..... shall pay the amount of duty", and under section 6 "the duty required to be paid under the Ordinance shall be a debt due to the Federal Government".

Looking at the Ordinance as a whole, I cannot see how it can be argued that the wording of the Ordinance is not clear and explicit in placing the liability to meet the debt on the promoter. A number of cases have been cited to us by Counsel for the respondent, but with them all the test to be applied is as stated by Lord Cairns in *Partington v. Attorney-General*[1] :—

"If the person sought to be taxed comes within the letter of the law he must be taxed however great the hardship may appear to the judicial mind to be."

The fact that the property of the Selangor Health and Strength Association is now in the hands of the Official Assignee is to my mind an irrelevant consideration in these proceedings. As I view the Ordinance, the promoter, the defendant, is liable for the payment of the duty as a debt due to the Federal Government.

I would accordingly allow this appeal and order that judgment be entered for the appellant against the respondent with costs here and in the Court below, the deposit of $500 in Court to be refunded to the appellant.

Appeal allowed.

SEM HIN PAWNSHOP v. REGINA.

[App. Crim. Juris. (Brown, J.) July 8, 1952]

[Singapore — Magistrate's Appeal No. 69 of 1952]

Pawnbrokers Ordinance (Cap. 216), ss. 27(1) and 28 — Watch unlawfully pawned — Proof of ownership conclusive — Conduct of parties.

In this case the Magistrate ordered the pawnbroker to return a watch, which had been unlawfully pawned, to the owner whose ownership was conclusively proved. Against this order the pawnbroker appealed.

Held, where ownership having been proved, by common law the owner would be entitled to the article unconditionally, however careless he had been. In a case where the conduct of both parties is free from criticism in no circumstances would the Court order the owner to pay a part of the loan; and the innocent pawnbroker must suffer for having taken a risk which is inseparable from his trade.

Cases referred to :—

(1) *Lam Fong Tze v. Rex* (1933) M.L.J. 91.

(2) *Lam Lock v. Rex* (1933) M.L.J. 92.

MAGISTRATE'S APPEAL.

T. W. Ong for the appellant.

A. V. Winslow for the Crown.

Cur. Adv. Vult.

Brown, J. : — This is an appeal by a pawnbroker from an order made by the Magistrate under the provisions of section 28 of the Pawnbrokers Ordinance ordering that a watch, which had been unlawfully pawned, should be returned to the owner.

The facts are simple. The owner of the watch is Mr. Soo Ban Hoe. On the morning of 8th of November 1951 his wife had engaged a new maid-servant, who had been sent to her by her mother. At half past five in the afternoon of that day the family had left the new maidservant in the house alone and had gone out to visit friends. Mr. Soo had left his watch on the bedroom cabinet. Upon his return the watch had disappeared — and so had the maidservant. The watch was found on the following day at the appellant's pawnshop, where it had been pawned for $60. The market price of the watch was $175.

The relevant part of section 27(1) reads as follows :—

> (c) "If in any proceedings before a Police Court or other Court it appears to the Court that any goods and chattels brought before the Court have been unlawfully pawned with a pawnbroker;
>
> The Court, on proof of the ownership of the goods and chattels, may, if it thinks fit, order the delivery thereof to the owner, either on payment to the pawnbroker of the amount of the loan or any part thereof, or without payment thereof or of any part thereof, as the Court, according to the conduct of the owner and the other circumstances of the case, seems just and fitting.

Mr. T. W. Ong, on behalf of the appellant, contended that the conduct of Mr. Soo was not free from criticism in that he had engaged a strange maidservant without taking the number of her identity card and had left her in the house alone on the very day on which she was engaged; and he contended that the Magistrate should have exercised his discretion, which the section gives him, to order the owner to make a payment to the pawnbroker of part of the loan. But I cannot think that it is incumbent on an employer who engages a new servant to examine his identity card or that he is to be regarded as lacking in ordinary prudence if he fails to take the number. Still less do I think that an employer is to be criticised for leaving a new servant in the house alone, which indeed may have been one of the considerations which he had in mind when he engaged her. It is to be observed that these arguments do not appear to have been addressed to the learned Magistrate. In this Court it was further urged on behalf of the appellant that the predatory maidservant inspired confidence by her manner. But presumably her manner inspired equal confidence in Mr. and Mrs. Soo.

I see no reason to doubt that upon the facts of this case the Magistrate made a correct order, and the appeal is dismissed.

But it was said that this appeal is of importance to pawnbrokers, not so much on account of the facts of this particular case as in order to obtain guidance for lower courts on the procedure which they should employ in exercising the discretion which the section gives them. I should have thought that sufficient guidance already existed in the section itself and in the cases of *Lam Fong Tze v. Rex*[1] and *Lam Lock v. Rex*[2]. The first essential is proof of ownership. In the present case the proof was conclusive, because a "Guarantee" of the watch was produced in evidence containing the number of the watch and the date of purchase. Such conclusive evidence cannot be expected in every case. The burden is on the owner to prove his ownership, and the Magistrate must be satisfied that he has discharged it. In many cases, particularly when the article has been in the owner's possession for a long time, there may be no evidence except that of the owner who will say: "that is mine. I recognise it." Such evidence will be quite sufficient if the Magistrate believes it.

Having established the ownership, the Magistrate must then consider the evidence of the circumstances in which the article came to be lost and the circumstances in which it came to be pawned. It is at this point that the Magistrate's discretion has to be exercised. Ownership having now been proved, by common law the owner would be entitled to the article unconditionally, however careless he had been; and the innocent pawnbroker — if he is innocent — would have to suffer without receiving any compensation for the amount of the loan which he has lost. But the section gives the Magistrate a discretion to mitigate this hardship, if he thinks fit, after taking into account "the conduct of the owner and the other circumstances of the case." In a case where the conduct of both parties is free from criticism I cannot think of any circumstances which would cause the Court to order the owner to a part of the loan; and the innocent pawnbroker must suffer for having taken a risk which is inseparable from his trade.

It only remains for me to deal with the criticism that in the present case the learned Magistrate, in his Grounds of Decision, failed to deal with the relevant considerations. I cannot agree that the learned Magistrate failed in this regard. He points out that Mr. Soo reported the loss to the Police within two hours of its discovery. And he refers to the evidence that only $60 was lent on the security of the watch, although the pawnbroker's assistant assessed its market value at $175. I have already observed that the arguments which were addressed to me in criticism of the owner's conduct do not appear to have been addressed to the learned Magistrate. And as, in my opinion, they lack substance there was no reason for him to have thought of them himself.

Appeal dismissed.